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Evidence.—In a jury case turning upon the weight of the evidence and not solely upon the credibility of witnesses, the trial court, on motion for a new trial, must necessarily pass, to some extent at least, upon the weight of the evidence; but the verdict ought not to be set aside unless manifest injustice has been done, especially when the case turns upon facts or inferences to be drawn from the facts proved and as to which reasonable men might differ.

[Ed. Note.—For other cases, see New Trial, Cent. Dig. §§ 146-148; Dec. Dig. § 72.* 10 Va.-W. Va. Enc. Dig. 457; 14 Va.-W. Va. Enc. Dig. 781; 15 Va.-W. Va. Enc. Dig. 740.]

6. Negligence (§ 136*)—Action—Question for Jury—Mixed Question of Law and Fact.—Negligence is a mixed question of law and fact to be decided by the court when the facts are undisputed or conclusively proved, but not to be withdrawn from the jury when they are disputed or the evidence is conflicting.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 277 353; Dec. Dig. § 136.* 10 Va.-W. Va. Enc. Dig. 414; 14 Va.-W. Va. Enc. Dig. 774; 15 Va.-W. Va. Enc. Dig. 733.]

7. Master and Servant (§§ 278, 281*)—Action for Injuries—Sufficiency of Evidence.—Evidence, in a servant's action for injuries from being thrown from a hand car, where he alleged negligence in furnishing a defective hand car and negligence of defendant's employee and agent in the manner of operating the car, and in which defendant set up his contributory negligence, held sufficient to sustain a verdict for the plaintiff.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 954-972, 977, 987-996; Dec. Dig. §§ 278, 281.* 9 Va.-W. Va. Enc. Dig. 725; 15 Va.-W. Va. Enc. Dig. 659.]

Error to Circuit Court, Campbell County.

Action by William L. Cardwell against the Norfolk & Western Railway Company. Judgment for defendant, and plaintiff brings error. Reversed, and judgment entered for plaintiff.

Volney E. Howard, of Lynchburg, *Frank Nelson*, of Rustburg, and *Thos. J. Williams*, of Lynchburg, for plaintiff in error.

F. S. Kirkpatrick, of Lynchburg, and *M. McCormick*, of Roanoke, for defendant in error.

CHAMBERS v. CITY OF ROANOKE.

Jan. 16, 1913. Rehearing denied June 14, 1913.

[78 S. E. 407.]

1. Licenses (§ 8*)—Produce Venders—Curb Tax.—Act March 3, 1896 (Laws 1895-96, c. 625 [Code 1904, § 1042a]), declaring it un-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

lawful for any city to tax any one selling their farm produce outside the market square, is qualifiedly amended by Act Feb. 9, 1898 (Laws 1897-98, c. 257), amending the charter of the city of Roanoke, so as to allow a curb tax in that city.

[Ed. Note.—For other cases, see Licenses, Cent. Dig. §§ 16, 17; Dec. Dig. § 8.* 9 Va.-W. Va. Enc. Dig. 312; 14 Va.-W. Va. Enc. Dig. 652; 15 Va.-W. Va. Enc. Dig. 609.]

2. Licenses (§ 8*)—Markets—Curb Tax.—Acts 1902-3-4, cc. 269, 566 (Code 1904, §§ 1013a-1048), amending and repealing in part chapter 44 of the Code in relation to cities and towns, do not repeal by implication amendment of Roanoke City Charter, § 23, by Act Feb. 9, 1898 (Laws 1897-98, c. 257), relating to markets, curb taxes, etc., since chapters 269 and 566 both declare that nothing in either shall repeal any charter provision, unless expressly referred to.

[Ed. Note.—For other cases, see Licenses, Cent. Dig. §§ 16, 17; Dec. Dig. § 8.* 9 Va.-W. Va. Enc. Dig. 312; 14 Va.-W. Va. Enc. Dig. 652; 15 Va.-W. Va. Enc. Dig. 609.]

Error to Corporation Court of Roanoke.

J. W. Chambers was fined for violating an ordinance of the City of Roanoke by the police justice. The corporation court affirmed the judgment of the police justice, and the defendant brings error. Affirmed.

S. Hamilton Graves, of Roanoke, for defendant in error.

BRAGG *v.* TINKLING LAND & IMPROVEMENT Co., Inc., et al.

June 12, 1913.

[78 S. E. 541.]

Dower (§ 76*)—Admeasurement—Parties.—Where, in a suit for admeasurement of dower out of land which had been conveyed in the lifetime of complainant's husband without her jointure, she admitted that her husband died seized of sufficient lands to satisfy her dower rights, which lands were in the possession of his heirs, it was error to dismiss the bill, which stated a prima facie case entitling complainant to dower, but the court should have required that the heirs be made parties and then determine whether complainant was entitled to dower out of the lands sought or those of which her husband died seized.

[Ed. Note.—For other cases, see Dower, Cent. Dig. §§ 267-276, Dec. Dig. § 76.* 4 Va. W. Va. Enc. Dig. 818; 14 Va.-W. Va. Enc. Dig. 256; 15 Va.-W. Va. Enc. Dig. 311.]

Appeal from Circuit Court, Lunenburg County.

Suit by the widow of W. J. Bragg to obtain dower out of cer-

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